

**LEMON GROVE [CITY COUNCIL]  
AGENDA ITEM SUMMARY**

**Item No.** 1.G  
**Mtg. Date** June 21, 2016  
**Dept.** Public Works

**Item Title:** [Ratify an Agreement with George Hills Company]

**Staff Contact:** [Mike James, Public Works Director]

**Recommendation:**

Adopt a resolution (**Attachment A**) ratifying an agreement for claims management services with George Hills Company. ]

**Item Summary:**

[On April 19, 2016, the City Council adopted a resolution that approved an agreement for claims management services with George Hills Company. Post City Council approval, city staff embedded the scope of work, which was originally shown as an exhibit at the April 19<sup>th</sup> City Council meeting. The reason for this amendment was to simplify and clarify the scope of work as the core content of the agreement and not shown as an exhibit. It is important to note that no terms of the agreement changed from the original scope of work. The only change was where the scope of work is shown in the agreement. Based on the review and recommendation of the City Attorney, staff is returning to the City Council to adopt a resolution (**Attachment A**) ratifying an agreement for claims management services with George Hills Company.]

**Fiscal Impact:**

[None. ]

**Environmental Review:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review        | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section [      ] | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

A. Resolution



# Attachment A

## RESOLUTION NO. [2016 - ]

### RESOLUTION OF THE [CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA] [RATIFYING THE CLAIMS MANAGEMENT SERVICES AGREEMENT WITH GEORGE HILLS COMPANY]

---

**WHEREAS**, on April 19, 2016 an agreement was awarded to George Hills Company for claims management services; and

**WHEREAS**, city staff consolidated the scope of work shown as an exhibit into the core language of the agreement which more clearly clarifies the scope of work; and

**WHEREAS**, no terms of the agreement presented on April 19, 2016 were changed as a part of this ratification. ]

**NOW, THEREFORE, BE IT RESOLVED** that the [City Council of the City of Lemon Grove, California] hereby ratifies the agreement (**Exhibit 1**) with George Hills Company for claims management services. ]

/////

/////



# Attachment A – Exhibit 1

**AGREEMENT  
BY AND BETWEEN  
THE CITY OF LEMON GROVE  
AND  
GEORGE HILLS COMPANY**

THIS AGREEMENT is approved and effective on May 1, 2016, by and between the CITY OF LEMON GROVE, a municipal corporation (the "CITY"), and GEORGE HILLS COMPANY is a California Corporation doing business as a licensed, independent insurance adjuster(s) and administrator(s) (the "CONSULTANT").

**RECITALS**

WHEREAS, the CITY desires to employ a CONSULTANT to provide third party claims adjusting and administration services. CLIENT is desirous of availing itself of property and liability claims adjusting and administrative services. The CONSULTANT is a claim administrative firm experienced in the handling of self-insured claims and is ready to and capable of performing such services. As such, the CONSULTANT shall act as a representative of the CLIENT for the investigation, adjustment, processing, supervision and evaluation of general liability, motor vehicle, and potential money damage claims filed by third parties against the CLIENT, or against parties for whom the CLIENT is alleged to be legally responsible, which are premised upon allegations of willful, intentional, negligent, or careless acts and/or omissions.

WHEREAS, the CITY has determined that the CONSULTANT is a California Corporation doing business as licensed, independent insurance adjusters and administrators, with John Chaquica, CEO.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

- 1) **ENGAGEMENT OF CONSULTANT.** The CITY hereby agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein. The CONSULTANT represents that all services required hereunder will be performed directly by the CONSULTANT or under direct supervision of the CONSULTANT.
- 2) **CITY RESPONSIBILITY:** The CITY agrees to provide the following:
  - a) CITY shall cooperate with CONSULTANT as may be reasonably necessary for CONSULTANT to perform its services.
  - b) CITY agrees to provide direction to CONSULTANT as requested regarding particular project requirements.
  - c) CITY shall identify primary contact person for account as well as for billing and loss run submission. In addition, CITY shall be responsible for reporting all changes thereto.
  - d) CITY shall be responsible for reporting all Bodily Injury Claims in addition to all other items noted in Attachment A "Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA)"
  - e) CITY shall be responsible for calculating and maintaining pool aggregate information.

# Attachment A – Exhibit 1

- 3) **SCOPE OF SERVICES.** The CONSULTANT agrees to provide complete claim handling services on each accident or incident which is or may be the subject of a claim. Such services shall include the following:
- a) **INVESTIGATIVE SERVICES:** CONSULTANT agrees to provide complete investigative services including, but not limited to:
    - i) Receipt and examination of all reports of accidents or incidents that are or may be the subject of claims.
    - ii) Investigate accidents or incidents as warranted, to include on-site investigation, photographs, witness interviews, determination of losses and other such investigative services necessary to determine all CITY losses but not to include extraordinary investigative services outside the expertise of CONSULTANT.
    - iii) Maintain service on a 24-hour, 7 days per week basis, to receive reports of any incident or accident which may be the subject of a liability claim and provide immediate investigative services to the extent necessary to provide a complete investigation.
    - iv) Undertake items of investigation requiring special handling for CITY at the direction of the CITY's Attorney or authorized representative.
  - b) **LIABILITY AND PROPERTY CLAIM HANDLING SERVICES:** CONSULTANT agrees to provide complete claim handling services on each accident or incident which is or may be the subject of a claim. Such services shall include the following.
    - i) Promptly set up a claim file upon receipt of the claim and maintain a claim file on each potential or actual claim reported.
    - ii) Assess and evaluate the nature and extent of each claim and establish claims reserves for indemnity and legal expense.
    - iii) Ensure timely claim handling, including contact and follow-up with claimants regarding claim issues and processing.
    - iv) Determine the need for defense representation, recommend legal counsel, and manage litigation activity.
    - v) Report claims to the excess insurer and coordinate with the excess insurer on a claim's progress in accordance with the excess insurer's reporting requirements.
    - vi) Maintain records on any such claim and notify CITY when CITY is about to exhaust the Self Insured Retention.
    - vii) Obtain settlement agreements and releases upon settlement of claims or potential claims not in litigation.
    - viii) Perform the necessary data gathering for the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) and the Set Aside Agreements in compliance with Section 111 of the MMSEA including the required reporting (see Attachment A).
    - ix) Provide an account manager and lead liability adjuster.
  - c) **LEGAL SUPPORT SERVICES:** CONSULTANT agrees to provide the following legal support services on each claim in which a third party claimant has commenced or threatened to commence litigation:
    - i) Upon notification by the CITY that litigation has been filed on an open claim, contact and provide counsel with all information and files concerning the claim.
    - ii) Cooperate with and assist any defense counsel assigned to litigation of open claims and provide such investigative services as directed during pre-trial and trial stages.
    - iii) Assist in responding to discovery or preparing discovery.
    - iv) At the request of the CITY, attend mandatory settlement conferences on behalf of CITY.

# Attachment A – Exhibit 1

- v) At the request of the CITY appear on behalf of CITY in small claims actions filed against CITY on open claims handled by CONSULTANT.
  - vi) Review, evaluate and adjust defense counsel statements for services.
  - vii) Regularly and reasonably discuss, review, and direct investigation issues, discovery, and case strategy with counsel.
  - viii) Review and evaluate case evaluations, correspondence and status reports forwarded to CONSULTANT by counsel.
  - ix) Cooperate with counsel as a team with an open communication approach on each case to obtain the most economical and best result for the CITY.
- d) REPORTS AND PROCEDURES: CONSULTANT agrees to provide the following:
- i) Within thirty (30) days of assignment, or sooner if practicable, required, or requested, CONSULTANT will provide CITY with a full factual report, showing name(s) of claimant(s), type of claim, date of loss, comments on liability, reserve recommendations, settlement recommendations, and other pertinent information. Subsequent to the initial thirty (30) day report, the CONSULTANT will report as often as warranted by any important change in status but no longer than every (90) days until the claim closes unless extended diary is appropriate.
  - ii) All original reports, documents, and claim data of every kind or description, that are prepared in whole or in part by or for the CONSULTANT in connection with this agreement shall be CITY 's property and constitute the CONSULTANT work product for which compensation is paid. A copy of all reports, documents, and claim data of every kind or description that is in whole or in part by or for the CITY is the property of the CONSULTANT. Additional copies of original reports, documents, and data requested by the CITY will be at the CITY's expense in accordance with this agreement.
  - iii) CONSULTANT agrees that CITY or its auditors shall have access and the right to audit and reproduce any of the CONSULTANT relevant records to ensure that the CITY is receiving all services to which the CITY is entitled under this Agreement or for any purpose relating to the Agreement.
- e) DATA: CONSULTANT agrees to perform the following:
- i) Utilize its "State of the Art" claims information system—SIMS.
  - ii) Record all claim information including all financial data.
  - iii) Provide CITY Read only on-line access to the claims data system, if desired by CITY.
  - iv) Provide monthly standard loss run and check register.
  - v) Provide annual claims data report for actuary and auditors upon request.
  - vi) Provide an annual Quality Assurance report.
  - vii) Provide assistance to CITY in developing customized reports when requested (may require additional charge).
  - viii) Convert the open claims data as of June 30, 2016.
- f) CLAIM REVIEW MEETINGS: CONSULTANT shall, upon request, meet with CITY to review and discuss claims inventory and claims results of past period and delivery of services by CONSULTANT.

# Attachment A – Exhibit 1

- g) FINANCIAL ACCOUNTING: Upon request CONSULTANT shall provide the following:
- i) If requested by the CITY, establish and maintain a trust fund for the purpose of paying indemnity and expenses that may be due on the claims. The amount to be maintained in the trust fund shall be determined by the CITY.
  - ii) Maintain a copy of all checks drawn by the CONSULTANT to pay claims and claims related expenses.
  - iii) Submit monthly check registers of all transactions made for the period.
  - iv) Complete or update Attachment B "Preferred Method of Check Processing" for check processing options. V
- h) SUBROGATION: During the course of CONSULTANT handling of a general liability and/or subrogation claim for CITY, if the institution of a civil action is determined by CITY to be the best course of action and in the best interest of CITY, then CITY may, at CITY's own expense:
- i) Authorize CONSULTANT to engage the services of a litigation attorney to consult, review, and determine the best legal strategy available at the time to obtain the best possible result for CITY. Upon determination by the attorney that a civil action is in the best interest of CITY, CONSULTANT will notify CITY and obtain authorization to pursue recovery in accordance with the recommendations of the litigation attorney; or
  - ii) Recall the claim to CITY's control so that CITY may pursue recovery in a manner to be determined by the CITY's attorney to be in the best interest of the CITY. In the event CITY recalls the claim as indicated above, CITY shall be responsible for payment to CONSULTANT of any and all time and expense incurred by CONSULTANT's claim adjuster (general liability and/or subrogation) or other general liability or subrogation specialist up to the time wherein the claim has been recalled by CITY.
  - iii) While CONSULTANT is handling a subrogation claim for CITY pursuant to the terms of this Agreement, the institution of a civil action is determined by CITY to be the best course of action, CITY may, at CITY's own expense.
  - iv) Authorize CONSULTANT to engage the services of a duly-licensed attorney to consult, review, and determine the best legal strategy available at the time to obtain the best possible result for CITY. Upon determination by the litigation attorney that a civil action is in the best interest of CITY, CONSULTANT will notify CITY and obtain authorization to pursue recovery in accordance with the recommendations of the litigation attorney;
  - v) Recall the claim to CITY's control so that CITY may pursue recovery in a manner to be determined by the CITY's attorney to be in the best interest of the CITY. In the event CITY recalls the claim as indicated above, CITY shall be responsible for payment to CONSULTANT of any and all time and expense incurred by CONSULTANT's subrogation claim adjuster and/or other subrogation specialist up to the time wherein the claim has been recalled by CLIENT.
- i) Agreement Negotiations: The CITY may unilaterally, or upon request from the CONSULTANT to reduce or increase the scope of services to be performed by the CONSULTANT under this agreement. Upon doing so, the CITY and the CONSULTANT agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.
- j) File Retention: CONSULTANT shall retain in accordance with the CITY's record retention policy up to a maximum of seven (7) years. After seven (7) years, unless



# Attachment A – Exhibit 1

requested by the CITY to retain at its own expense, CONSULTANT shall delete the scanned files in accordance with the timeline stated in Attachment C.

- k) Denial, Compromise or Settlement of Claims: It is agreed that CITY has granted \$0.00 authority to the CONSULTANT for the purpose of compromising, settling, and paying any claims against CITY being handled by the CONSULTANT. CITY has granted \$0.00 authority to the CONSULTANT for the purpose of issuing payment for legal expenses. Prior approval to compromise or settle any claim, or pay any expense will be obtained from the designated claims officer or employee on matters exceeding the authority granted above.
- 4) PROJECT COORDINATION AND SUPERVISION. The City Manager or designee is hereby being designated as the Project Coordinator for the CITY and will monitor the progress and execution of this Agreement. The CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONSULTANT. John Chaquica or designee thereby is designated as the Project Director for the CONSULTANT.
- 5) COMPENSATION AND PAYMENT. The compensation for the CONSULTANT shall be based on monthly billings covering time and materials expense charges when required in the form of adjuster's fees. Billings shall include name, title, respective rates, hours worked and also materials, if any. The total cost for all work described below shall not exceed fifteen thousand (\$15,000.00) (the Base amount) through June 30<sup>th</sup> each year without prior written authorization from the City Manager or designee. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with and determined by and in the sole discretion of the CITY. The CONSULTANT shall maintain all books, documents, papers, time sheets, accounting records and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of the final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.
- a) Compensation for services provided during subsequent years may be re-negotiated annually, but will not increase by more than 3%. Such change, if any, shall be submitted to CITY by May 1<sup>st</sup> of each year. Submission shall be in writing and subject to mutual agreement.

# Attachment A – Exhibit 1

- b) Time and expense fees will be as follows:
    - i) Adjuster's Fee: \$83.00 per hour.
    - ii) Auto Expense: Standard IRS rate
    - iii) Allocated file expenses to be paid at cost.
    - iv) Custom reporting beyond the above will be furnished upon request at an additional cost to be agreed upon by the CONSULTANT and CITY.
  - c) Administration Fee: N/A and shall be for the following:
    - i) Data access to claims data system.
    - ii) Monthly listing of open claims by date of loss, department, location, and alpha by name showing expense categories, reserves and total incurred.
    - iii) Monthly claim summary reports, within 15 days of month-end .
    - iv) Provide loss run data and required reports for actuarial and auditing purposes.
    - v) Provide annual summary of claims activity.
    - vi) Medicare transmission and reporting.
    - vii) Financial accounting if applicable.
  - d) Subrogation Fee: 30% contingency fee.
  - e) Catastrophic Clause: Should a catastrophic event occur resulting in 10 or more claims, CITY shall be billed time and expense for said claims at \$83.00 per hour.
- 6) **LENGTH OF AGREEMENT.** This agreement will last until June 30, 2017. The contract may be extended for four (4) additional one (1) year periods by written agreement of the parties, and may be subject to both City Council appropriation of funds and City Council authorization of such contract extension(s). Unless otherwise stated only Section 4 and Section 5, shall be open for amendment for services each fiscal year.
- 7) **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the CONSULTANT discharges the City of all of the City's payment obligations and liabilities under this agreement.

# Attachment A – Exhibit 1

Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONSULTANT agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONSULTANT's written work product for the CITY's purposes, and the CONSULTANT expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONSULTANT shall relieve the CONSULTANT from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

- 8) **INDEPENDENT CONSULTANT.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint venturers with one another. Neither the CONSULTANT nor the CONSULTANT's employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONSULTANT and the CONSULTANT's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONSULTANT and its employees. Neither this Agreement nor any interest herein may be assigned by the CONSULTANT without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONSULTANT from employing or hiring as many employees, or subCONSULTANTS, as the CONSULTANT may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONSULTANT with its subCONSULTANT(s) shall require the subCONSULTANT to adhere to the applicable terms of this Agreement.

- 9) **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT's employees except as herein set forth, and the CONSULTANT expressly agrees not to represent that the CONSULTANT or the CONSULTANT's agents, servants, or employees are in any manner agents, servants or employees of the CITY, it being understood that the CONSULTANT, its agents, servants, and employees are as to the CITY wholly independent CONSULTANTS and that the CONSULTANT's obligations to the CITY are solely such as are prescribed by this Agreement.
- 10) **COMPLIANCE WITH APPLICABLE LAW.** The CONSULTANT, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF

# Attachment A – Exhibit 1

LEMON GROVE, whether now in force or subsequently enacted. The CONSULTANT, and each of its subCONSULTANTS, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

- 11) **LICENSES, PERMITS, ETC.** The CONSULTANT represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that is legally required to practice its profession. The CONSULTANT represents and covenants that the CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONSULTANT to practice its profession. Submittals Required with the Agreement. Failure of the CONSULTANT to provide the following documentation with the executed agreement will cause delay in the agreement being executed by the City:
- a) Insurance as specified in Section 15 of this agreement;
  - b) City Business License;
- 12) **STANDARD OF CARE.** The CONSULTANT, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT'S trade or profession currently practicing under similar conditions and in similar locations. The CONSULTANT shall take all special precautions necessary to protect the CONSULTANT's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.
- a) Unless disclosed in writing prior to the date of this agreement, the CONSULTANT warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONSULTANT's professional performance or the furnishing of materials or services relating thereto.
  - b) The CONSULTANT is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONSULTANT has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONSULTANT has notified the CITY otherwise, the CONSULTANT warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONSULTANT to use due diligence under this sub-paragraph will render the CONSULTANT liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.
  - c) City's Right to Terminate for Default. If the CONSULTANT fails to perform or adequately perform any obligation required by this agreement, the CONSULTANT's failure constitutes a Default. If the CONSULTANT fails to satisfactorily cure a Default within ten (10) calendar days of receiving a written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the CONSULTANT, and any person claiming any rights by or through the CONSULTANT under this Agreement. The rights and remedies of the City enumerated in this paragraph are cumulative and shall not limit the City's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or enacted or established at a later date, that may be available to the City against the CONSULTANT.

# Attachment A – Exhibit 1

- 13) **NON-DISCRIMINATION PROVISIONS.** The CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONSULTANT will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
- 14) **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONSULTANT certain confidential information to enable the CONSULTANT to effectively perform the services to be provided herein. The CONSULTANT shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONSULTANT without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.
- a) The CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.
  - b) CONSULTANT shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.
- 15) **INDEMNIFICATION AND HOLD HARMLESS.** The CONSULTANT shall indemnify, defend, and hold harmless the CITY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subCONSULTANTS in the performance of services under this Agreement. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONSULTANT expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY 's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

# Attachment A – Exhibit 1

- 16) **INSURANCE.** The CONSULTANT, at its sole cost and expense, shall purchase and maintain, and shall require its subCONSULTANTS, when applicable, to purchase and maintain throughout the term of this agreement, the following insurance policies:
- a) Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.
  - b) Employee fidelity bond in the amount of \$500,000.
  - c) Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include hired and non-owned vehicles.
  - d) Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all personal injury, bodily injury and property damage arising out of its operation under this Agreement. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.
  - e) Workers' compensation insurance covering all of CONSULTANT's employees. The CONSULTANT shall comply with all of the provisions of the Worker's Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONSULTANT under this Agreement. That policy shall provide a minimum of \$1,000,000 of employer's liability coverage, and the CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
  - f) The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.
  - g) If any required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONSULTANT shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.
  - h) Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.
  - i) Deductibles. All deductibles on any policy shall be the responsibility of the CONSULTANT
  - j) **Specific Provisions Required.** Each policy required under this section shall expressly provide, and an endorsement shall be submitted to the City, that:
    - i) Said policies, except for the professional liability and worker's compensation policies, shall name the CITY and its officers, agents and employees as additional insureds. The CITY's Additional Insured status must be reflected on additional insured endorsement form CG 20 12, or equivalent, which shall be submitted to the CITY.
    - ii) The Policies cannot be canceled, non renewed or materially changed except after thirty (30) calendar days prior written notice by the CONSULTANT to the CITY by

# Attachment A – Exhibit 1

certified mail, as reflected in an endorsement which shall be submitted to the CITY except for non-payment of premium, in which case ten (10) days notice will be provided.

- iii) This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONSULTANT does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

- k) The CONSULTANT may obtain additional insurance not required by this Agreement.

- 17) **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

- 18) **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principles, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA"). The costs of mediation shall be borne equally by the parties.

If a third part dispute or litigation, or both, arises out of, or relates in any way to the services provided under this Agreement, upon the City's request, the CONSULTANT, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The CONSULTANTs assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

- 19) **TERMINATION.** This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 30-day's written notice to the CONSULTANT. During said 30-day period the CONSULTANT shall perform all services in accordance with this Agreement. The CONSULTANT may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the City of its obligations under this Agreement including but not limited to payment of invoices.
- a) Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement that is not cured to the City's satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONSULTANT in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.
  - b) Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONSULTANT as provided for herein.
  - c) In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the



# Attachment A – Exhibit 1

amounts payable hereunder, and less any damages caused the CITY by the CONSULTANT's breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 6.

- d) The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONSULTANT; (2) a reorganization of the CONSULTANT for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONSULTANT.
  - e) The termination of the services shall be effective upon receipt of the notice by the CONSULTANT.
- 20) **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of:
- a) if personally delivered, the date of delivery to the address of the person to receive such notice,
  - b) if sent by overnight mail, the business day following its deposit in such overnight mail facility,
  - c) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service,
  - d) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or
  - e) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To the CITY: Lydia Romero, City Manager  
City of Lemon Grove  
3232 Main Street  
Lemon Grove, CA 91945-1701

To the CONSULTANT: John Chaquica, CEO  
George Hills Company  
3043 Gold Canal Drive, Suite 200  
Rancho Cordova, CA 95670

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

- 21) **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONSULTANT shall not perform services of any kind for any person or entity whose interest's conflict in any way with those of the CITY OF LEMON GROVE. The CONSULTANT also agrees not to specify any product, treatment, process or material for the project in which the CONSULTANT has a material financial interest, either



# Attachment A – Exhibit 1

direct or indirect, without first notifying the CITY of that fact. The CONSULTANT shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. The CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

If the CONSULTANT violates any conflict of interest laws or any of these provisions in this section, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the CONSULTANT to liability to the CITY for attorney fees and all damages sustained as a result of the violation.

☐ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONSULTANT shall:

1. Go to [www.fppc.ca.gov](http://www.fppc.ca.gov)
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed contracts.

The CONSULTANT shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONSULTANT.

## 22) **MISCELLANEOUS PROVISIONS.**

- a) *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.
- b) *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.
- c) *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.
- d) *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.
- e) *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.
- f) *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
- g) *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.
- h) *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

# Attachment A – Exhibit 1

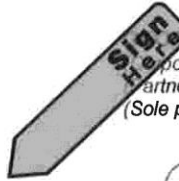
- i) *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.
- j) *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- k) *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.
- l) *Severability.* The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

# Attachment A – Exhibit 1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and it shall take effect May 1, 2016.

**CITY OF LEMON GROVE**

By: \_\_\_\_\_  
Lydia Romero  
  
\_\_\_\_\_  
City Manager  
(Title)  
  
\_\_\_\_\_  
(Date)



**GE HILLS COMPANY**  
(Corporation – signatures of two corporate officers)  
(Partnership – one signature)  
(Sole proprietorship – one signature)

By: \_\_\_\_\_  
John E. Chaquica  
  
\_\_\_\_\_  
Chief Executive Officer  
(Title)  
  
\_\_\_\_\_  
5/26/16  
(Date)

\_\_\_\_\_  
Kim Santin  
  
\_\_\_\_\_  
Finance Director  
(Title)  
  
\_\_\_\_\_  
5/27/2016  
(Date)



APPROVED AS TO FORM:

By: \_\_\_\_\_  
James Lough  
  
\_\_\_\_\_  
City Attorney  
(Title)  
  
\_\_\_\_\_  
(Date)

By: \_\_\_\_\_  
(Name)  
  
\_\_\_\_\_  
(Title)  
  
\_\_\_\_\_  
(Date)

# Attachment A – Exhibit 1

## ATTACHMENT A

### MEDICARE, MEDICAID, AND SCHIP EXTENSION ACT OF 2007 (MMSEA)

This law requires liability insurers, self-insurers, no fault insurers and workers' compensation insurers to report certain information to The Centers for Medicare and Medicaid Services (CMS) concerning Medicare beneficiaries. The penalty for failure to comply is \$1,000 per day, per claimant.

George Hills Company, Inc. (GHC) has contracted with ExamWorks for Mandatory Insurer Reporting (MIR) for the CLIENT. ExamWorks shall represent the CLIENT and Responsible Reporting Entity (RRE) to this existing contract and this addendum, and will be the designated reporting agent. GHC will be responsible for gathering and reporting accurate claims data required by MMSEA to ExamWorks in a timely manner. GHC agrees to assume the responsibility for reporting data to ExamWorks to meet all reporting requirements in accordance with MMSEA, on behalf of the RRE; including assuming responsibility for any fines or penalties that are directly caused by GHC's non-compliance. GHC further agrees to indemnify and hold-harmless, RRE, and staff, for any penalties or fines resulting from GHC's direct failure to timely and accurately provide the reporting data to ExamWorks. The above-mentioned obligations to indemnify and hold-harmless shall not be applicable to matters relating to delays caused by RRE or other third parties, or inaccurate data supplied to GHC by RRE or other third parties.

By agreement with GHC, ExamWorks will indemnify and hold GHC harmless from and against any claim, damage, fine, loss and expense, arising in connection with, or as a result of, any error, omission, or negligent performance of its obligations as reporting agent, which indemnity will include all reasonable costs of litigation and attorneys' fees incurred. Without in any way limiting the indemnity set forth in this Agreement, all work performed by ExamWorks will be done in a good and professional manner.

GHC shall perform the necessary data gathering for RRE and ExamWorks; as such GHC shall include in our monthly invoicing the time for such work at our contract hourly rate.

ExamWorks will perform the MMSEA Mandatory Insurer Reporting function for GHC, and its RREs, without charge, subject to the following. RRE will designate ExamWorks, unless otherwise requested, as its exclusive vendor for all of RRE's "Qualified Referrals" (those claims determined to require Medicare Set Aside (MSA) or a Claim Settlement Allocation (CSA) and RRE will utilize other ExamWorks services related to Medicare Secondary Payer (MSP) compliance identified in their fee schedule.

# Attachment A – Exhibit 1

## ATTACHMENT B

### PREFERRED METHOD OF CHECK PROCESSING

1. Selection of Bank
  - a) Clients Choice ☐  
Name  
Address  
Please provide signature cards, sample check, starting check number, name of contact person
  - b) GHC uses CA Bank & Trust ☐
2. Trust Balance Desired \$\_\_\_\_\_
3. Account funding: GHC will notify client when the balance falls below required balance
- 4A. Number of Signatures Required
  - a) One ☐
  - b) Two on all checks ☐
  - c) Two on checks in excess of \$\_\_\_\_\_ ☐
- 4B. If two signatures are required please specify:
  - a) Both GHC ☐
  - b) One GHC, one client ☐  
GHC signers: John Chaquica, CEO; Randy Rendig, President; Kimberly Santin, Finance Director
5. Accountability
  - a) Positive Pay Yes ☐ No ☐  
**GHC recommends positive pay to mitigate the potential for fraud.**
  - b) Daily check registers Yes ☐ No ☐
  - c) Statement to be balanced by client ☐
  - d) Statement to be balanced by GHC with copies to client ☐

# Attachment A – Exhibit 1

## ATTACHMENT C

### TIME LINE FOR RECORD RETENTION

Claim Files with TPA	7 years after date closed  CONSULTANT shall scan and delete all files in accordance with the timeline stated in Attachment C.
Claims Involving Minors	3 years from age 18 or 7 years whichever is longer from closure
Litigated Claims Files	5 years after litigation is concluded
Formal Notice of Liability Claim	Closed + 2 years unless litigated
General Correspondence	3 years
Incident Reports	Closed + 2 years unless litigated
Investigative Files and Tapes	7 years
Loss Runs	Current year-end report + 7 years